IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

RCRev..No. 143 of 2005()

RCA.48/2003 of I ADDL. DISTRICT COURT, PALAKKAD
RCP.6/2002 of MUNSIFF COURT, CHITTUR
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PETITIONERS IN RCR:-
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1. PARVATHY, W/O.KANTHASWAMY,
RESIDING AT C.T.PALAYAM, KOLLENGODE,
CHITTUR TALUK.

2. CHANDRIKA, D/O. DO. DO.

3. AMBIKA, D/O.DO. DO.

4. GIRIJA, D/O. DO. DO.

5. VASANTHA, D/O. DO. DO.

6. VASUDEVAN, S/O.DO. RESIDING AT
CHEDATHARAPALAYAM, KIZHAKKETHARA AMSOM,
KOLLENGODE, CHITTUR TALUK.

7. RAMAKRISHNAN @ MOORTHI,
S/O.PECHIMUTHU, RESIDING IN DO. DO.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON

RESPONDENTS:-
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1. S.RUGMANI, W/O.LATE V.SIVARAMAN,
RESIDING AT THEKKEPAVADI,
KOLLENGODE, CHITTUR TALUK.

(.....2)

2. S.INDUMATHI, D/O.DO. RESIDING AT 2NDD STREET, K.P.N.COLONY, THIRUPUR, COIMBATORE DISTRICT.

3. S.SUMATHI, D/O.DO. RESIDING AT CHAIRMAN COLONY, PALAYAKADU, THIRUPUR, COIMBATORE DISTRICT.

4. MURUGADAS, S/O.P.KANTHASWAMY, RESIDING AT C.T.PALAYAM, KOLLENGODE, CHITTUR TALUK.

BY ADV. SRI.BINOY VASUDEVAN
SRI.R.SURAJ KUMAR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON 16/10/2007 PASSED THE FOLLOWING:

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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R.C.R.NO.143 of 2005

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Dated this the 16th day of October, 2007

O R D E R

Balakrishnan Nair J.

The revision petitioners are the tenants and respondents are the landlords. The need urged by the landlords under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act (hereinafter referred to as 'the Act') has been concurrently upheld by the Rent Controller and the Appellate Authority. Hence, this revision under Section 20 of the Act.

2. The brief facts of the case are the following: The tenanted room is one of the five rooms in a building. Its area is 5 x 3.5 meters. The original tenant was running a barber shop there. Presently, the said business is run by the 6th petitioner. The landlord wanted the building for running a tuition centre for the third respondent who is one of the daughters of the first respondent. The said daughter is a post graduate in Mathematics and therefore she wants to set up a tuition centre in the room. She is presently residing along with her husband at Thirupur. They want to permanently shift to Kollengode. The mother is running a rice mill and a mill producing rice flakes. The mother is having also agricultural land. The husband of the

third respondent is having no permanent job at Thirupur now. He is working as an agent of some companies. Therefore, even after shifting to Kollengode, he can continue the said business and he can also assist the mother in the agricultural operations and in running the mills. In the above factual background, the landlords required the tenanted room for running a tuition centre.

3. The tenants resisted the application alleging that the need urged is only a convenient ruse to evict them. The room is not suitable for running a tuition centre. It is by the side of a busy road. The sound emanating from the heavy traffic will disturb the functioning of the tuition centre. The third respondent is very rich and she is not in need of the tenanted premises for running a tuition centre.

4. The Rent Controller framed the necessary issues and from the side of the landlords, the third respondent was examined as P.W.1. She produced Ext.A1 degree certificate showing her educational qualifications. From the side of the tenants, R.Ws.1 and 2 were examined and Ext.B1 document was marked. Ext.C1 Commissioner's report and Ext.C1(a) plan prepared by the Commissioner, were also marked as court exhibits. The Rent Controller allowed the application under Section 11(3) of the Act. The same was affirmed by the Appellate Authority also. The finding of the

appellate authority is attacked by the petitioners herein.

5. Learned counsel for the petitioners submitted that having regard to the custom of the family, normally, the husband will never shift to the residence of the wife. Further, in her statement she has deposed that she intends to run the tuition centre by engaging other teachers and finally she was constrained to claim that she herself intend to shift to Kollengode along with her family. So, going by her deposition, it is doubtful whether claim is bonafide. Further, learned counsel submitted that a present need is not projected. She intends to shift to Kollengode and thereby the room is claimed on a specific future need. In such circumstances, the court should be very careful in assessing the bonafides of the need alleged. For not considering the evidence in the right perspective mentioned above, learned counsel for the petitioners submitted that the decision of the Appellate Authority is liable to be revised. Learned counsel also relied a decision of this court in **Muhammed Basheer v. Mujib Rahman** (2005 (4) KLT 697) in support of his submissions.

6. Learned counsel for the respondents, on the other hand, supported the findings of the Appellate Authority. He also pointed out that it is a finding of fact which cannot be revised under Section 20 of the Act. He

also relied on the decisions of this court in **Madhava v. Pathumabi** (2005 (3) KLT 369) and also **Sait Nagee Purushotham & Co. Ltd. v. Vimalabai Prabhulal** (2005 (4) KLT 452).

7. We notice that the need urged is the need of the third respondent to start a tuition centre. She is qualified to run a tuition centre. It is quite natural that she cannot take classes throughout the day for all subjects and she has to engage other teachers also. If the room is available and she can start the business, she intends to shift to Kollengode along with her family. We find nothing unusual about the said claim of the third respondent. There is nothing in the evidence on record to doubt the genuineness of the said claim made by her. We agree with the reasons and conclusions of the Appellate Authority that the need urged is bonafide. At best what can be urged is that a different view is possible on the facts. But the same is not a ground to interfere with the findings of the appellate authority. The view taken by the court below is a plausible view on the facts. So, we cannot interfere with the same. In other words, we can interfere with the same if only the order impugned is shown to be perverse or one which no man in his senses will render. Going by the facts of the case, we feel that this is not a fit case calling for interference under Section 20 of the Act.

In the result, the revision petition fails. Learned counsel for the petitioners prays for some time to vacate the premises. We heard learned counsel for the respondents also on this point. Having regard to the facts of the case, the petitioners are granted six months' time from today to vacate the premises provided they file an unconditional undertaking in the form of an affidavit, before the execution court within three weeks from today, undertaking to vacate the premises on the expiry of six months from today. They shall also pay the rent due from time to time till the room is vacated.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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